



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Marc E. Elias, Esq.  
Jonathan S. Berkon, Esq.  
Perkins Coie  
700 Thirteenth Street, N.W. Suite 600  
Washington, DC 20005-3960

**DEC 12 2014**

RE: MUR 6597

Dear Messrs. Elias and Berkon:

This is in reference to the complaint filed by your clients, Feinstein for Senate and Fund for the Majority ("the Committees") with the Federal Election Commission on June 21, 2012, concerning unauthorized financial transactions engaged in by the Committees' former treasurer, Kinde Durkee. The Commission found that there was reason to believe Durkee knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), 432(c), 434(b) and 439a(b), provisions of the Federal Election Campaign Act of 1971, as amended. The Commission also took no action and closed the file as to Durkee & Associates, LLC. On December 8, 2014, the Commission accepted a conciliation agreement signed by Durkee addressing violations stemming from Durkee's unauthorized activities as to the Committees and other political committees. Accordingly, the Commission closed the file in this matter on December 8, 2014.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). A copy of the conciliation agreement with Durkee is enclosed for your information. Also enclosed is a Factual and Legal Analysis which explains the basis for the Commission's action as to Durkee & Associates, LLC.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Dawn M. Odrowski  
Attorney

Enclosure(s)  
Conciliation Agreement  
Factual and Legal Analysis

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
2014 AUG 28 PM 1:5  
OFFICE OF GENERAL  
COUNSEL

MUR 6597

## CONCILIATION AGREEMENT

pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities and a Complaint filed by William Wardlaw, treasurer for Feinstein for Senate.

The Commission found reason to believe that Kinde Durkee (“Respondent”) knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), 432(c), 434(b), and 439a(b), provisions of the Federal Election Campaign Act of 1971, as amended, (“the Act”).

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding.

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

**IV. The pertinent facts in this matter are as follows:**

1. Under the Act, a treasurer is required to accurately keep an account of and report receipts and disbursements. *See* 2 U.S.C. §§ 432(c)(5), 434(b)(2), (3), (4), (6). Committee treasurers and any other person required to file any report or statement under the Act and the

1 Commission's regulations are also personally responsible for the timely and complete filing of  
2 the report or statement and for the accuracy of any information or statement contained in it.  
3 11 C.F.R. § 104.14(d).

4 2. The Act and Commission regulations require that all funds of a political committee  
5 must be segregated from and may not be commingled with the personal funds of any individual.  
6 2 U.S.C. § 432(b)(3); 11 C.F.R. § 102.15.

7 3. The Act prohibits any person from converting contributions to a Federal candidate for  
8 personal use. 2 U.S.C. § 439a(b)(1). "Personal use" means any use of funds in a campaign  
9 account of a present or former candidate to fulfill a commitment, obligation or expense of any  
10 person that would exist irrespective of the candidate's campaign or duties as a Federal  
11 officeholder. 11 C.F.R. § 113.1(g). The term "person" includes individuals and committees.  
12 2 U.S.C. § 431(11).

13 4. A knowing and willful violation of the Act requires full knowledge of all the relevant  
14 facts and a recognition that the action is prohibited by law.

15 5. Kinde Durkee formed Durkee & Associates ("D&A") in 2000 to provide accounting  
16 and reporting services to political campaigns. For more than a decade, Durkee served as  
17 treasurer or assistant treasurer for hundreds of state and federal political committees and non-  
18 profit organizations, prepared and filed their disclosure reports, and exercised control over their  
19 bank accounts.

20 6. Durkee served as treasurer of Feinstein for Senate and the Committee to Re-Elect  
21 Loretta Sanchez for 19 years and 15 years, respectively, including during the period before she  
22 formed D&A in 2000. Durkee served as treasurer of the Committee to Re-Elect Linda Sanchez

1 and its predecessor committee for about ten years, the Fund for a Majority for four years, and  
2 Susan Davis for Congress for about three years. Feinstein for Senate, Fund for the Majority,  
3 Susan Davis for Congress, the Committee to Re-Elect Linda Sanchez, and the Committee to Re-  
4 Elect Loretta Sanchez (collectively "the Committees") are political committees within the  
5 meaning of 2 U.S.C. § 431(4)(A), and filed disclosure reports with the Commission.

6 7. On March 27, 2012, the United States Attorney for the Eastern District of California  
7 filed a criminal Information charging Durkee with "routinely misappropriate[ing] client funds by  
8 moving without authorization substantial sums of money out of client accounts, including  
9 political campaign accounts, into Durkee & Associates' or into other clients' accounts," and  
10 submitting false disclosure reports to the California Secretary of State, the Senate Office of  
11 Public Records, and the Commission that failed to disclose the transfers of funds into and out of  
12 clients' accounts. On March 30, 2012, Durkee pleaded guilty to five counts of mail fraud,  
13 admitting that she caused in excess of \$7 million in losses to more than 10 and possibly 50 or  
14 more of her clients, beginning as early as January 2000 and continuing through  
15 early September 2011. On November 28, 2012, the district court sentenced Durkee to a 97-  
16 month term of imprisonment and ordered her to pay \$10.5 million in restitution. The district  
17 court amended its judgment on September 26, 2013, decreasing the restitution amount to  
18 \$9,749,989.76 due to a clerical error in the loss ascribed to one of the political committees.  
19 Durkee began serving her sentence on January 2, 2013.

20 8. For over ten years, in her capacity as treasurer of the Committees, Durkee made  
21 unauthorized transfers of funds from the Committees' bank accounts into D&A bank accounts  
22 that contained both business and personal funds of Durkee; she thereby also commingled the

1 Committees' funds with personal funds. Durkee further used those funds to pay for personal  
2 expenses, including personal mortgage and credit card payments.

3 9. Durkee also created false records in the form of financial reports she provided to the  
4 Committees to hide her activities. She then failed to disclose any of these unauthorized transfers  
5 in the Committees' reports that she filed with the Commission. Her efforts to conceal the  
6 unauthorized transfers demonstrate that she knew her actions were unauthorized and illegal.

7 10. According to available financial information covering varying periods of time for  
8 each Committee, Durkee filed disclosure reports on behalf of the Committees that failed to  
9 disclose substantial amounts of activity: (1) as to Feinstein for Senate, Durkee failed to disclose  
10 unauthorized disbursements and receipts totaling \$4,645,386.12 and \$100,000, respectively;  
11 (2) as to the Fund for the Majority (Sen. Feinstein's leadership PAC), Durkee failed to disclose  
12 unauthorized disbursements and receipts totaling \$25,000 and \$1,874.10, respectively; (3) as to  
13 Susan Davis for Congress, Durkee failed to disclose unauthorized disbursements and receipts  
14 totaling approximately \$641,000 and \$483,480, respectively; (4) as to the Committee to Re-  
15 Elect Linda Sanchez, Durkee failed to disclose unauthorized disbursements totaling  
16 approximately \$887,700 and over-reported or under-reported receipts in each disclosure report  
17 filed between January 1, 2007 and September 30, 2011; and (5) as to the Committee to Re-Elect  
18 Loretta Sanchez, Durkee failed to disclose unauthorized disbursements totaling approximately  
19 \$1,826,293 and over-reported or under-reported receipts in each disclosure report filed between  
20 January 1, 2007 and September 30, 2011.

21

V. Respondent knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), 432(c), 434(b), and 439a(b), by commingling committee funds with personal funds, failing to keep accurate records of committee funds, filing inaccurate reports with the Commission, and converting campaign funds to her personal use.

VI. Respondent will take the following actions:

1. In ordinary circumstances, the Commission would seek a civil penalty based on the knowing and willful violations outlined in this agreement pursuant to 2 U.S.C. §437g(a)(5)(B) of up to 200 percent of any contribution or expenditure involved in such violation, or in this instance, \$878,000. However, the Commission is taking into account the fact that Respondent Kinde Durkee, through the submission of financial documentation to the Commission and additional representations, has demonstrated that financial hardship prevents her from paying a civil penalty in this matter. These representations include that Respondent Durkee has no significant assets, has pleaded guilty and is currently incarcerated for a criminal matter arising from her unauthorized use of funds, and was ordered by the U.S. District Court of the Eastern District of California to pay \$9,749,989.76 in restitution to all of the committees from whom she misappropriated funds, including \$5,545,368 to the Committees. In addition, Respondent Durkee is liable for significant federal and state tax debts in excess of \$350,000. The Commission regards these submissions and representations as material representations. Due to the mitigating circumstances presented by Respondent Durkee's financial condition, the Commission agrees that no civil penalty shall be due. If evidence is uncovered indicating Durkee's financial condition is not as stated, a civil penalty of up to eight hundred seventy-eight thousand dollars (\$878,000) shall be immediately due, pursuant to 2 U.S.C. § 437g(a)(5)(B).

2. Respondent will cease and desist from violating 2 U.S.C. §§ 432(b)(3), 432(c), 434(b), and 439a(b).

3. Respondent agrees not to volunteer or engage in work for any federal political committee or any federal campaign in a capacity involving finances or disclosure reports for a period of fifteen (15) years from the date of this agreement.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

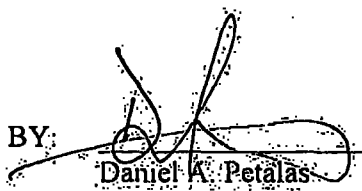
VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

BY:

  
Daniel A. Petalas  
Associate General Counsel  
for Enforcement

Date

12/11/14

FOR THE RESPONDENT:

  
Kinde Durkee

Date

8/19/2014



1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 **RESPONDENTS:** Kinde Durkee  
5 Durkee & Associates, LLC MUR: 6597  
6

7 **I. INTRODUCTION**  
8

9 This matter was generated based on information ascertained by the Federal Election  
10 Commission ("the Commission") in the normal course of carrying out its supervisory  
11 responsibilities and a complaint filed by William Wardlaw, treasurer for Feinstein for Senate,  
12 with the Commission. *See* 2 U.S.C. § 437g(a)(1), (a)(2). It concerns numerous violations of the  
13 Federal Election Campaign Act of 1971, as amended (the "Act"), resulting from an  
14 embezzlement scheme Kinde Durkee engaged in over the course of ten years while serving as  
15 treasurer for hundreds of state and federal political committees. Ultimately, Durkee  
16 misappropriated in excess of \$7 million from many of those committees and omitted the  
17 unauthorized transactions from disclosure reports filed with the Commission, resulting in  
18 substantial misstatements of the committees' federal activity.

19 On March 30, 2012, Durkee pleaded guilty to five counts of mail fraud and was  
20 subsequently ordered to pay restitution to multiple political committees that sustained losses  
21 from her embezzlement.<sup>1</sup> Although describing a scheme that affected hundreds of state and  
22 federal committees, the facts detailed in the criminal matter centered on Durkee's fraudulent  
23 activities involving the accounts of five federal political committees: that is, Susan Davis for  
24 Congress ("Davis Committee"); the Committee to Re-Elect Linda Sanchez ("Linda Sanchez  
25 Committee"); the Committee to Re-Elect Loretta Sanchez ("Loretta Sanchez Committee");

<sup>1</sup> *See generally United States v. Kinde Durkee*, 12-cr-00123 (E.D. Cal. 2012).

1     Feinstein for Senate ("Feinstein Committee"); and Fund for the Majority, Senator Diane  
2     Feinstein's leadership PAC (collectively, the "Committees"). Durkee formerly served as  
3     treasurer for each of these five committees. The most substantial information concerning her  
4     violations of the campaign finance laws relate to her dealings with these particular committees.

5             As discussed at greater length below, the complaint, pleadings filed in Durkee's criminal  
6     prosecution, and other information available to the Commission provide compelling evidence  
7     that Durkee violated the commingling, recordkeeping, reporting, and personal use provisions of  
8     the Act and Commission regulations.

## 9     II.     FACTUAL BACKGROUND

### 10     A.     Kinde Durkee's Illegal Activities

11             Kinde Durkee formed Durkee & Associates ("D&A") in 2000 to provide accounting and  
12     reporting services to political campaigns. For more than a decade, Durkee served as the  
13     acknowledged "go-to" treasurer and accountant for Democratic political committees in  
14     California at the federal and state levels.<sup>2</sup> Before her arrest on September 2, 2011, Durkee  
15     served as treasurer or assistant treasurer for hundreds of state and federal political committees  
16     and non-profit organizations, prepared and filed their disclosure reports, and exercised control  
17     over their bank accounts.

18             On March 27, 2012, the United States Attorney for the Eastern District of California filed  
19     a criminal Information charging Durkee with "routinely misappropriate[ing] client funds by  
20     moving without authorization substantial sums of money out of client accounts, including  
21     political campaign accounts, into Durkee & Associates' or into other clients' accounts," and

<sup>2</sup>     Adam Nagourney, *A 'Go To' Accountant is Accused of Fraud*, N.Y. TIMES, Sept. 14, 2011, at A18  
[hereinafter Nagourney, *'Go To' Accountant*], [www.nytimes.com/2011/09/14/us/kinde-durkee-campaign-accountant-is-accused-of-fraud.html](http://www.nytimes.com/2011/09/14/us/kinde-durkee-campaign-accountant-is-accused-of-fraud.html).

1 submitting false disclosure reports to the California Secretary of State, the Senate Office of  
2 Public Records, and the Commission.<sup>3</sup> On March 30, 2012, Durkee pleaded guilty to five counts  
3 of mail fraud, admitting that she caused in excess of \$7 million in losses to more than 10 and  
4 possibly 50 or more of her clients, beginning as early as January 2000 and continuing through  
5 early September 2011.<sup>4</sup> On November 28, 2012, the district court sentenced Durkee to a 97  
6 month term of imprisonment and ordered her to pay \$10.5 million in restitution.<sup>5</sup> Her jail  
7 sentence was scheduled to begin on January 2, 2013.<sup>6</sup>

8 In addition to serving as treasurer or assistant treasurer herself, pleadings filed in the  
9 criminal matter show that D&A provided numerous political committees accounting and  
10 campaign reporting services, including (1) maintaining and acting as the committees' custodian  
11 for their financial records; (2) tracking the committees' receipts and disbursements; (3) filing  
12 disclosure reports with the Commission and other state agencies, often in the capacity as  
13 treasurer of the committee; and (4) maintaining the committees' bank accounts. Over the years,  
14 Durkee obtained signature authority on more than 700 client bank accounts.<sup>7</sup> In most cases, her  
15 clients did not have signatory authority on the accounts.

<sup>3</sup> See Information, *United States v. Kinde Durkee*, 12-cr-00123 (E.D. Cal. Mar. 27, 2012) ("Information").

<sup>4</sup> Plea Agreement, *United States v. Kinde Durkee*, 12-cr-00123 (E.D. Cal. Mar. 30, 2012) ("Plea Agreement").

<sup>5</sup> See Judgment, *United States v. Kinde Durkee*, 12-cr-00123 (E.D. Cal. Nov. 28, 2012); *Ex-Campaign Treasurer Kinde Durkee Sentenced to 8 Years in Prison*, L.A. TIMES, Nov. 28, 2012, <http://latimesblogs.latimes.com/california-politics/2012/11/campaign-treasurer-kinde-durkee-sentenced-to-8-years-prison-7-million-theft.html>.

<sup>6</sup> See Juliet Williams, *Kinde Durkee, Treasurer Who Defrauded Feinstein, Ollier Clients, Faces Sentencing*, HUFFINGTON POST, Nov. 28, 2012, [http://www.huffingtonpost.com/2012/11/28/kinde-durkee\\_n\\_2206964.html](http://www.huffingtonpost.com/2012/11/28/kinde-durkee_n_2206964.html).

<sup>7</sup> See Plea Agreement, *supra*, Ex. A ¶¶ 5, 8; *William Wardlaw for Feinstein for Senate v. First Cal. Bank*, Civ. No. SC114232, at ¶ 28 (Cal. Super. Ct.) ("Feinstein Lawsuit").

1 During the course of her scheme, Durkee transferred funds from client accounts into  
2 D&A accounts and paid expenses with those funds, including personal mortgage payments,  
3 personal credit card payments, D&A expenses, and repayments to accounts from which she had  
4 made unauthorized withdrawals.<sup>8</sup> Durkee reportedly “used money she siphoned from campaign  
5 committees to pay for her mortgage, her American Express bill, entertainment costs—including  
6 money paid to Amazon.com and Baskin-Robbins—and the monthly charge for caring for her  
7 mother at a Belmont Village assisted-care facility.”<sup>9</sup> Durkee’s response to the U.S. Probation  
8 Office’s presentence report addresses the large amount of misappropriated funds as follows:

9 Over the course of several years, Ms. Durkee misappropriated millions of  
10 dollars in client funds over which she had control as the owner of Durkee and  
11 Associates. Although Ms. Durkee did not use those funds to furnish a lavish  
12 lifestyle, she admittedly did use a significant amount of money for personal  
13 expenses, such as food, clothing, mortgage payments, and her parents’  
14 assisted living care. However, as the Probation Officer recognized, most of  
15 the funds appear to have been used to keep the business running. Although  
16 Ms. Durkee intended to repay the funds, it quickly spiraled out of control and  
17 reached a level she will not be able to repay during her lifetime.<sup>10</sup>  
18

19 The available information indicates that Durkee used the D&A accounts for both business  
20 and personal expenses, that Durkee deposited personal funds in her business accounts, and rarely  
21 used her personal bank accounts. Based on available information, it appears that Durkee  
22 engaged in thousands of transactions, regularly moving money among her client accounts, at  
23 times on a daily basis, without maintaining records of those transfers.

24 Durkee did not include her unauthorized transfers in the disclosure reports she filed on  
25 behalf of her client committees or in the financial summaries she provided her clients. It appears

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<sup>8</sup> See Plea Agreement, *supra*, Ex. A ¶¶ 13, 15.

<sup>9</sup> Nagourney, ‘Go To’ Accountant, *supra*.

<sup>10</sup> Defendant’s Response to Presentence Report and Sentencing Memorandum, at 10-11, *United States v. Kinde Durkee*, 12-cr-00123 (E.D. Cal. Oct. 24, 2012) (footnote and internal citation omitted).

1 that most of Durkee's clients did not have access to their own bank accounts, never requested  
2 their bank records from Durkee, D&A, or their banks, and never sought to reconcile their  
3 disclosure reports against the bank records.

4 After Durkee's arrest, many of the committees that had retained Durkee and her firm  
5 were unable to access their records from First California Bank, where most of the committees'  
6 financial accounts were maintained. The bank had frozen those accounts as part of an  
7 interpleader action the bank filed to resolve the uncertainty caused by Durkee's prolific  
8 unauthorized transfers among the various committees' accounts.<sup>11</sup> The bank alleged that the  
9 funds in the defendants' accounts were so commingled as a result of Durkee's transfers that the  
10 bank could not determine what amounts each entity was due.<sup>12</sup> The bank sought an order  
11 requiring the defendant committees to interplead and litigate their respective claims to the  
12 aggregate amount of \$2,539,049.27 held in all the accounts.<sup>13</sup> After Durkee's arrest, the  
13 Committees also filed civil lawsuits in California state court against, among others, Durkee, her  
14 husband and business partner John Forgy, D&A, and First California Bank.<sup>14</sup> The lawsuits and  
15 the interpleader action remain ongoing.

<sup>11</sup> See Verified Complaint-In-Interpleader, *First Cal. Bank v. 68th AD Democratic PAC*, No. BC470182, at 25 (Cal. Super. Ct. Sept. 23, 2011) (naming as defendants those entities that had deposit accounts identifying Durkee or a D&A representative as an authorized signatory).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 25-27. A Superior Court judge in California recently ordered the funds to be distributed to the owners. See *\$2.5 Million Frozen in Kinde Durkee Case Released to Politicians, Charities*, L.A. TIMES, Nov. 27, 2012, <http://latimesblogs.latimes.com/california-politics/2012/11/kinde-durkee-case-funds-released.html>.

<sup>14</sup> The Feinstein Committee and Fund for the Majority filed their lawsuit on September 23, 2011, even before amending their disclosure reports. That action named Matthew Lemcke, a D&A employee, as a defendant. Feinstein Lawsuit at 1. The Davis and Loretta and Linda Sanchez Committees filed suit on February 29, 2012. *Committee to Re-Elect Loretta Sanchez v. First Cal. Bank*, Civ. No. BC479873, at 1 (Cal. Super. Ct. Feb. 29, 2012) ("Davis/Sanchezes Lawsuit").

**B. Durkee's Work for the Committees**

Durkee provided accounting, compliance, and campaign reporting services to hundreds of federal and state committees through D&A, including the Committees discussed in detail here.

Four of the Committees were among D&A's largest federal political committee clients.<sup>15</sup>

Durkee served as treasurer of the Feinstein and Loretta Sanchez Committees for 19 years and 15 years, respectively, including during the period before she formed D&A in 2000. Durkee served as treasurer of the Linda Sanchez Committee and its predecessor committee for about ten years, the Fund for a Majority for four years, and the Susan Davis Committee for about three years.

Through her firm, Durkee had control of all aspects of the Committees' finances. Durkee and D&A opened and maintained the Committees' bank accounts, deposited receipts and made disbursements from the accounts, tracked those transfers, and filed all required Commission reports on behalf of the Committees.<sup>16</sup> Durkee, alone or in combination with other D&A employees, also had signature authority on the accounts.<sup>17</sup> Although Durkee opened the bank accounts in the Committees' names, the Committees did not receive copies of their bank statements.

D&A provided periodic financial reports to each of the Committees that varied in frequency and detail. These "Balance Sheets," "Balance Summar[ies]," and "Profit and Loss Statements" purportedly "detailed the receipts, expenditures, and balances" of each of the

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<sup>15</sup> These Committees also sustained some of the largest losses of D&A's federal political committee clients according to the Judgment and restitution order entered against Durkee in the criminal matter. *See* Judgment, *supra*, Restitution Addendum.

<sup>16</sup> Compl. at 1; Plea Agreement, *supra*, Ex. A ¶¶ 5-8; Feinstein Lawsuit ¶¶ 28, 31, 33-34; Davis/Sanchez Lawsuit ¶¶ 31, 33, 35-36.

<sup>17</sup> Plea Agreement, *supra*, Ex. A ¶ 8.

1 Committees' accounts.<sup>18</sup> According to the Committees, Durkee's weekly reports showed  
2 receipts and disbursements that were consistent with their own internal records of receipts and  
3 disbursements.<sup>19</sup> Only after Durkee's September 2, 2011, arrest did the Committees discover  
4 her unauthorized transfers, fraud, and misrepresentations concerning the Committee funds under  
5 her control.

6 The Plea Agreement includes specific examples of Durkee's unauthorized transactions  
7 involving the Committees' accounts and funds. It identifies numerous instances where Durkee  
8 (1) issued checks from the Committees' accounts, deposited them into the D&A accounts, and  
9 used those funds, almost immediately, to pay personal and business expenses, or (2) issued  
10 checks from D&A accounts to the Committees using funds funneled from the accounts of a state  
11 candidate committee's accounts that Durkee also controlled, apparently to conceal her  
12 misappropriation and cover necessary expenses of the Committees. Durkee further failed to  
13 disclose each of those unauthorized transactions in the disclosure reports she filed with the  
14 Commission on behalf of the Committees. The following four tables each describe the  
15 transactions as to each of the Committees that Durkee conceded in the Plea Agreement she  
16 engaged in without authorization:

<sup>18</sup> Compl. at 1; Feinstein Lawsuit ¶¶ 35, 43, 48; Davis/Sanchezes Lawsuit ¶¶ 35, 37, 59.

<sup>19</sup> Compl. at 2; Feinstein Lawsuit ¶ 35; Davis/Sanchezes Lawsuit ¶ 37.

TABLE 1—FEINSTEIN COMMITTEE<sup>20</sup>

DATE	TRANSACTION	PURPOSE
3/2/2010	Three checks totaling \$18,000 issued from Feinstein account and deposited into D&A account.	Funds used for payment of personal mortgage, Sprint, and payroll.
4/20/2010	Check in amount of \$15,000 issued from Feinstein account and deposited into D&A account; check of the same amount issued from Loretta Sanchez account on same date and deposited into D&A account.	Funds used for payment of credit card, nursing home fees, employee payments, and bank fees.
5/6/2010	Two checks of \$20,000 each issued on Feinstein account and deposited into D&A account.	Funds used for payment of mortgage, health insurance, self-storage, payroll, and bank fees.
June 2010	\$25,000 transferred from Feinstein account to account of state candidate committee (recital is unclear whether transfer was directed through a D&A account).	Repay funds embezzled from state candidate committee account while Durkee was aware she was under investigation by the California Fair Political Practices Commission ("FPCC") in connection with her filings for the state committee.
6/10/2010	Three checks of \$10,000 each issued from Feinstein, Loretta Sanchez, and Linda Sanchez accounts, and deposited into D&A account.	Funds used for payment to American Express, personal loan payment, payment to Kaiser, and bank fees.
7/7/2010	Two checks totaling \$23,000 issued from Feinstein account and deposited into D&A account.	Funds used for payment of American Express bill, which included charges for baseball tickets, Disneyland and Trader Joe's.
7/19/2010	Three checks of \$25,000 each issued from Feinstein account and deposited into D&A account.	Funds used for payment of mortgage on D&A office building, credit card, and payroll.

<sup>20</sup> Plea Agreement, *supra*, Ex. A ¶¶ 19, 25-32, 39-40, 52-53. The Plea Agreement also references a \$25,000 transaction from the Feinstein Committee's account into the account of state candidate Lou Correa but does not provide any additional details concerning that transaction. *Id.*, Ex. A ¶ 59. Because it is unclear whether this transaction is different from any of the \$25,000 transactions also discussed in the Plea Agreement, it is not included in Table 1. The Plea Agreement does not include any transactions specifically relating to the Fund for the Majority.



TABLE 2—LORETTA SANCHEZ COMMITTEE<sup>21</sup>

DATE	TRANSACTION	PURPOSE
3/5/2010	\$10,000 check issued from Loretta Sanchez Committee account deposited into D&A account.	Covered a payment of \$7,476 to Anthem Blue Cross.
4/20/2010	\$15,000 check issued from Loretta Sanchez Committee deposited into D&A account.	Combined with funds from another federal committee, covered checks to Chase Card Services, nursing home fees, checks to D&A staff, and \$750 in bank fees for non-sufficient funds ("NSF") checks.
June 2010	\$30,000 transferred from Loretta Sanchez Committee to account of state candidate committee (unclear if transferred through D&A Account).	Repay funds embezzled from state candidate committee account while Durkee was aware she was under investigation by the FPCC in connection with her filings for the state committee.
6/10/2010	\$10,000 check issued from Loretta Sanchez Committee deposited into D&A account.	Combined with funds from two other federal committees, covered a \$25,000 payment to American Express, a \$1,286 loan on Durkee's residence, a payment to Kaiser Foundation Health, and \$600 in bank fees for NSF checks.
10/1/2010 (approx.)	\$125,000 check to Loretta Sanchez Committee drawn on D&A account using funds funneled from state candidate committee account.	Needed to cover expenses of Loretta Sanchez Committee.
10/8/2010 (approx.)	\$45,000 check to Loretta Sanchez Committee drawn on D&A account using funds funneled from state candidate committee account.	Needed to cover expenses of Loretta Sanchez Committee.

<sup>21</sup> Plea Agreement, *supra*, Ex. A ¶¶ 19, 36-37, 39-40, 52-53, 64-65, 68-69.

**TABLE 3—LINDA SANCHEZ COMMITTEE<sup>22</sup>**

DATE	TRANSACTION	PURPOSE
June 2010	\$15,000 transferred from Linda Sanchez Committee to repay account of state candidate committee (unclear if transferred through D&A account).	Repay funds embezzled from state candidate committee account while Durkee was aware she was under investigation by the FPCC in connection with her filings for the state committee.
6/10/2010	\$10,000 check issued from Linda Sanchez Committee account deposited into D&A account.	Combined with funds from two other federal committees, covered \$25,000 payment to American express, a \$2,855.72 loan on Durkee residence, payment to Kaiser Foundation Health and \$600 in bank fees for NSF checks.
9/29/2010 (approx.)	\$30,000 check to Linda Sanchez Committee account drawn on D&A account using funds funneled from state candidate committee account.	Needed to cover expenses of Linda Sanchez Committee.

**TABLE 4 – DAVIS COMMITTEE<sup>23</sup>**

DATE	TRANSACTION	PURPOSE
9/29/2010 (approx.)	\$72,000 check to Susan Davis for Congress drawn on a D&A account using funds funneled from state candidate committee account.	Needed to cover expenses of Davis Committee.
3/17/2011 (approx.)	\$1,000 check to Susan Davis for Congress drawn on D&A account using funds funneled from a non-profit organization.	Needed to cover expenses of Davis Committee.

<sup>22</sup> Plea Agreement, *supra*, Ex. A ¶¶ 19, 52-53, 58-59.

<sup>23</sup> Plea Agreement, *supra*, Ex. A ¶¶ 47-48, 58-59.

1 In addition, as a result of the Committees' review of their bank statements following  
2 Durkee's arrest, the Committees discovered multiple transfers between accounts that Durkee  
3 made "for the purpose of artificially inflating the balance" of the Committees' accounts in an  
4 attempt to hide her embezzlement.<sup>24</sup> The bank statements also revealed that, to conceal her theft,  
5 Durkee deliberately provided false account balances both in her regular reports to the  
6 Committees as well as in the disclosure reports she filed on behalf of the Committees with the  
7 Commission.<sup>25</sup> For instance, a report to the Feinstein Committee from Durkee dated August 4,  
8 2011, claimed that the Feinstein Committee had a balance of \$2,455,076.83 in its accounts as of  
9 July 30, 2011, when that balance was actually \$356,250.47.<sup>26</sup> Similarly, other Committees'  
10 disclosure reports and bank statements identify widely divergent amounts in the Committees'  
11 accounts: the Loretta Sanchez Committee's 2010 July Quarterly Report shows an ending cash on  
12 hand balance of \$1,267,685.30, while its bank statements showed a balance on June 30, 2010, of  
13 only \$64,468.20; the Linda Sanchez Committee's 2010 Year End Report reflects an ending cash  
14 on hand balance of \$172,299.58, while its bank statements for the same period showed a balance  
15 of \$5,682.88; and the Davis Committee's 2010 October Quarterly Report shows an ending cash  
16 on hand balance of \$534,971.99, while its bank statements for the same period showed a balance  
17 of \$29,009.87.<sup>27</sup> Durkee also frequently overdrew the bank accounts: in the course of one year,

<sup>24</sup> Feinstein Lawsuit ¶¶ 74, 76; Davis/Sanchezes Lawsuit ¶¶ 85-87.

<sup>25</sup> See Davis/Sanchezes Lawsuit, ¶¶ 42, 49, 117.

<sup>26</sup> Feinstein Lawsuit ¶¶ 46-47.

<sup>27</sup> Davis/Sanchezes Lawsuit, ¶¶ 44, 52, 55, 117.

for example, she overdrew the Feinstein Committee's account 68 times, incurring overdraft fees.<sup>28</sup>

**III. THERE IS REASON TO BELIEVE DURKEE KNOWINGLY AND WILLFULLY VIOLATED NUMEROUS PROVISIONS OF THE ACT**

The Feinstein Committee's treasurer filed a Complaint against Durkee alleging knowing and willful violations of the reporting, commingling, and personal use provisions of the Act.<sup>29</sup> The Commission notified Durkee that it had received the Complaint as well as internally generated matters, including matters relating to each of the Committees.<sup>30</sup> Durkee did not respond to any of the notifications.

Under the Act, a committee, through its treasurer, is required to keep an accurate account of and disclose its receipts, disbursements, and cash-on-hand balances.<sup>31</sup> The Act's recordkeeping obligations include keeping an account of the name and address of every person to whom a disbursement is made, together with the date, amount, and purpose of the disbursement, and keeping a receipt, invoice, or cancelled check for disbursements in excess of \$200.<sup>32</sup> Committees are required to file reports with the Commission through their treasurers disclosing, among other things, the amount of cash-on-hand at the beginning of the reporting period and the total amount of disbursements, including the name and address of each person to whom an

<sup>28</sup> Feinstein Lawsuit ¶¶ 80-81.

<sup>29</sup> See Compl., MUR 6597 (Kinde Durkee).

<sup>30</sup> See Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters, 74 Fed. Reg. 38,617 (Aug. 4, 2009). The notifications sent to Durkee address violations of 2 U.S.C. §§ 432(b) and (c), 434(b); 11 C.F.R. §§ 102.9, 102.15, 104.3.

<sup>31</sup> See 2 U.S.C. §§ 432(c), 434(b); 11 C.F.R. §§ 104.3, 104.14(d).

<sup>32</sup> 2 U.S.C. § 432(c)(5), (d); 11 C.F.R. § 102.9(a), (b)(2).

1 expenditure exceeding \$200 is made together with the date, amount, and purpose of the  
2 expenditure.<sup>33</sup>

3 The Act and Commission regulations further require that all funds of a political  
4 committee must be "segregated from, and may not be commingled with, the personal funds of  
5 any individual,"<sup>34</sup> and prohibit any person from converting contributions to a federal candidate  
6 for personal use.<sup>35</sup> "Personal use" means any use of funds in a campaign account of a federal  
7 candidate to fulfill a commitment, obligation, or expense of any person that would exist  
8 irrespective of the candidate's campaign duties.<sup>36</sup> The Act and Commission regulations set forth  
9 some *per se* examples of personal use, including mortgage payments, tuition payments, non-  
10 campaign-related automobile expenses, and health club dues, among others.<sup>37</sup>

11 According to the Commission's *Statement of Policy Regarding Treasurers Subject to*  
12 *Enforcement Proceedings*, a former treasurer may be named as a respondent in his or her  
13 personal capacity when it appears that he or she, while serving as treasurer, may have violated  
14 obligations imposed by the Act or regulations and where the violation was knowing and  
15 willful.<sup>38</sup> A knowing and willful violation of the Act indicates that "acts were committed with  
16 full knowledge of all the relevant facts and a recognition that the action is prohibited by law."<sup>39</sup>

<sup>33</sup> See 2 U.S.C. § 434(b)(1), (2), (4)(G), (5), (6)(A).

<sup>34</sup> *Id.* § 432(b)(3); 11 C.F.R. § 102.15.

<sup>35</sup> 2 U.S.C. § 439a(b)(1).

<sup>36</sup> See 2 U.S.C. § 439a(b)(2).

<sup>37</sup> See 2 U.S.C. § 439a(b)(2)(A)-(I); see also 11 C.F.R. § 113.1(g)(1)(i).

<sup>38</sup> 70 Fed. Reg. 3, 5 (Jan. 3, 2005). See MUR 6179 (Christopher Ward); MUR 5971 (Jennifer Adams); MUR 5721/5772 (Kenneth Phelps); MUR 5610 (Earl Allen Haywood).

<sup>39</sup> 122 Cong. Rec. H3778 (daily ed. May 3, 1976).

1 Such a violation may be established "by proof that the defendant acted deliberately and with  
2 knowledge" that an action was unlawful.<sup>40</sup>

3 Through her guilty plea, Durkee has admitted to embezzling campaign funds and to  
4 disguising her scheme by filing false disclosure reports with the Commission. For over ten  
5 years, in her capacity as treasurer of the Committees Durkee made unauthorized transfers of  
6 funds from the Committees' bank accounts into D&A bank accounts that contained both  
7 business and personal funds of Durkee; she thereby also commingled the Committees' funds  
8 with personal funds. Durkee further used those funds to pay for personal expenses, including  
9 personal mortgage and credit card payments.

10 Durkee also created false records in the form of financial reports she provided to the  
11 Committees to hide her activities. She then failed to disclose any of these unauthorized transfers  
12 in the Committees' reports that she filed with the Commission. Her efforts to conceal the  
13 unauthorized transfers demonstrate that she knew her actions were unauthorized and illegal. In  
14 the Plea Agreement, Durkee admits that she "did devise and intend to devise and participate in a  
15 material scheme and artifice to defraud clients of Durkee & Associates," and that "[t]hroughout  
16 the existence of the scheme, [she] acted with the intent to defraud."<sup>41</sup> The agreement also states  
17 that Durkee "understood that part of the scheme included submitting false information to . . . the  
18 Federal Election Commission," and that the false reports filed with the Commission were

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<sup>40</sup> *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990).

<sup>41</sup> Plea Agreement, *supra*, Ex. A ¶ 12.

1 “instrumental to the success of the scheme because they served to hide [her] activity and prevent  
2 its discovery.”<sup>42</sup>

3 According to disclosure reports and other available financial information, Durkee filed  
4 disclosure reports on behalf of the Committees that failed to disclose substantial amounts of  
5 activity: (1) the Feinstein Committee failed to disclose unauthorized disbursements and receipts  
6 totaling \$4,645,386.12 and \$100,000, respectively;<sup>43</sup> (2) the Fund for the Majority (Sen.  
7 Feinstein’s leadership PAC) failed to disclose unauthorized disbursements and receipts totaling  
8 \$25,000 and \$1,874.10, respectively;<sup>44</sup> (3) the Davis Committee failed to disclose unauthorized  
9 disbursements and unauthorized receipts totaling approximately \$641,000 and \$483,480,  
10 respectively; (4) the Linda Sanchez Committee failed to disclose unauthorized disbursements  
11 totaling approximately \$887,700 and over-reported or under-reported receipts in each disclosure  
12 report filed between January 1, 2007 and September 30, 2011; and (5) the Loretta Sanchez  
13 Committee failed to disclose unauthorized disbursements totaling approximately \$1,826,293 and  
14 over-reported or under-reported receipts in each disclosure report filed between January 1, 2007  
15 and September 30, 2011.

16 Accordingly, there is reason to believe that Kinde Durkee knowingly and willfully  
17 violated 2 U.S.C. §§ 432(b)(3), 432(c), 434(b), and 439a(b) by commingling committee funds  
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<sup>42</sup> *Id.*, Ex. A ¶¶ 14, 81.

<sup>43</sup> See Feinstein for Senate, Amended 2011 October Quarterly Report at 3-4 (Dec. 27, 2011).

<sup>44</sup> See Fund for the Majority, 2011 Year-End Report at 3-4 (Jan. 31, 2012).

1 with personal funds, failing to keep accurate records of committee funds, filing inaccurate  
2 reports with the Commission, and converting campaign funds to her personal use.

3 D&A was also identified as a Respondent in MUR 6597 and provided notice of the  
4 Complaint and an opportunity to respond. No response was received. Because it appears that  
5 D&A is defunct and has no assets, it would not be an efficient use of Commission's resources to  
6 pursue any allegations against D&A. Accordingly, the Commission takes no action against  
7 D&A and closes the file as to it.